Supreme Court, U.S.
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No. 92-221

In The

Supreme Court of the United States

October Term, 1992

ROWAN COMPANIES, INC.,

Petitioner,

versus

SPENCER PARKER,

Respondent.

AND

ROWAN COMPANIES, INC.,

Petitioner,

versus

ANTHONY R. BRILEY,

Respondent.

On Petition For Writs Of Certiorari To The Louisiana Supreme Court

PETITION FOR WRITS OF CERTIORARI OF ROWAN COMPANIES, INC.

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QUESTIONS PRESENTED FOR REVIEW

I.

Can a state deprive a litigant of the right to a jury trial as recited in the Jones Act (46 USCA § 688), without violating article VI, cl. 2 (the Supremacy Clause), article III, sec. 2, cl. 1 (admiralty jurisdiction clause), and the seventh amendment to the U.S. Constitution?

II.

Can a state validly single out and discriminate against Jones Act, admiralty and maritime personal injury claims providing that a jury trial shall not be available in such claims when filed in state court while jury trials are available for all other personal injury claims?

III.

Is a non-jury trial a remedy "saved" to suitors in state court by 28 U.S.C. § 1333, or a remedy that is only available under the exclusive grant of admiralty jurisdiction to the federal courts?

LIST OF PARTIES

The following are the parties to this proceedings:

Spencer Parker (and wife, Jacqueline Parker)
Plaintiff-Respondent

Represented by David B. Allen
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Attorney for Plaintiff-Respondent Parker

Anthony R. Briley
Plaintiff-Respondent

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Rowan Companies, Inc.
Defendant-Petitioner

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There are no parent or subsidiary companies to
be listed.

RULE 29 NOTIFICATION

Since the constitutionality of a state statute is drawn into question, 28 U.S.C. § 2403(b) may be applicable. Accordingly, the Attorney General of the State of Louisiana will be served with a copy of this pleading.

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DECISIONS BELOW

The decisions on rehearing of the Louisiana Supreme Court were rendered on May 26, 1992, and have not as yet been reported. However, both are available through Westlaw with the PARKER case reported at 1992 WL 112103 (La., 5/26/92), and the BRILEY case being reported at 1992 WL 112104 (La., 5/26/92). The opinions are reproduced at Appendix 1 (pp. App. 1-13) (PARKER) and Appendix 2 (pp. App. 30-31) (BRILEY).

The decisions of the Louisiana Supreme Court, on original hearing, were initially reported at 591 So.2d 349 (La. 1991) (PARKER), and 591 So.2d 355 (La. 1991) (BRILEY). Since these decisions have been recalled, the opinions have been reproduced at Appendix 1 (pp. App. 14-28) (PARKER) and Appendix 2 (pp. App. 31-33) (BRILEY).

In the BRILEY case, the Third Circuit Court of Appeals, State of Louisiana, denied the Writ application of ROWAN COMPANIES, INC., on May 7, 1991. In the PARKER case, the First Circuit Court of Appeals, State of Louisiana, denied the Writ application of ROWAN COMPANIES, INC., on May 24, 1991. The unreported decisions of the respective District Courts in ruling on the Motions to Strike are likewise reproduced at Appendix 1 (pp. App. 29) (PARKER) and Appendix 2 (pp. App. 34-36) (BRILEY).

JURISDICTION

This Petition seeks review of the judgments of the Louisiana Supreme Court entered on the 26th day of May, 1992. This Petition is filed timely pursuant to 28 USCA § 2101(c) (West 1992) and Supreme Court Rule 13.1, 28 USC. This Court's jurisdiction is invoked pursuant to 28 USCA § 1257 (West 1992).

CONSTITUTIONAL PROVISIONS AND STATUTES PRESENTED FOR REVIEW

(1) The Merchant Marine Act (The Jones Act), 46 App. U.S.C. § 688(a) (West 1992):

> (a) Application of Railway Employee Statutes; Jurisdiction
>
> Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply; . . .

(2) La. Code Civ. Proc. art. 1732 (West 1988):

> A trial by jury shall not be available in:
>
> (1) A suit where the amount of no individual petitioner's cause of action exceeds twenty thousand dollars exclusive of interest and costs.
>
> (2) A suit on an unconditional obligation to pay a specific sum of money, unless the defense thereto is forgery, fraud, error, want, or failure of consideration.

(3) A summary, executory, probate, partition, mandamus, habeas corpus, quo warranto, injunction, concursus, worker's compensation, emancipation, tutorship, interdiction, curatorship, legitimacy, filiation, annulment of marriage, or divorce proceeding.

(4) A proceeding to determine custody, visitation, alimony, or child support.

(5) A proceeding to review an action by an administrative or municipal body.

(6) A suit on an admiralty or general maritime claim under federal law that is brought in state court under a federal "saving to suitors" clause, if the plaintiff has designated that suit as an admiralty or general maritime claim.

(7) All cases where a jury trial is specifically denied by law.

(3) U.S. Const., art. III, sec. 2, cl. 1. Jurisdiction of Courts:

Section 2. The judicial power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States and treaties made, or which shall be made, under their Authority; . . . To all Cases of Admiralty and Maritime Jurisdiction; . . .

(4) U.S.Const., 7th amdt. – Civil Trials:

In Suits at common-law, with a value in controversy shall exceed $20.00, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common-law.

(5) 28 U.S.C. § 1333. Admiralty, Maritime and Prize Cases (West 1992):

> The District Court shall have original jurisdiction, exclusive of the Courts of the States, of:
>
> (1) Any civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled.

(6) U.S. Const., art. VI, cl. 2:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties, made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

STATEMENT OF THE CASE

A. SPENCER PARKER

SPENCER PARKER (hereinafter PARKER), a resident of Louisiana, brought suit on March 13, 1990, against ROWAN COMPANIES, INC. (hereinafter ROWAN), in the Sixteenth Judicial District Court, Parish of St. Mary, State of Louisiana, seeking damages as a seaman under the Merchant Marine Act – more commonly referred to as the Jones Act (46 App. U.S.C. § 688), and the general maritime law. Suit was purportedly filed pursuant to the savings to suitors clause. See 28 U.S.C. § 1333. Seaman's status is not contested.

In his original Complaint, PARKER requested trial by jury. Subsequently, by amended Petition, PARKER withdrew that request. Upon withdrawal, ROWAN, requested a jury trial. PARKER filed a Motion to Strike ROWAN's jury trial request. That motion was granted by the trial court on January 16, 1991. ROWAN applied for writs to Louisiana's First Circuit Court of Appeal. That application was denied on May 24, 1991. ROWAN then applied to the Louisiana Supreme Court for the issuance of writs which application was granted on June 28, 1991.

B. ANTHONY BRILEY

In addition to PARKER, a separate suit was filed by ANTHONY R. BRILEY (hereinafter BRILEY) on June 6, 1990, in the Thirteenth Judicial District Court, Parish of Evangeline, State of Louisiana, seeking damages as a seaman under the Merchant Marine Act (the Jones Act), and the general maritime law. Suit was also purportedly filed pursuant to the savings to suitors clause. Seaman status is not contested here either.

While BRILEY did not seek a jury trial in his original Petition, ROWAN did in its answer. A Motion to Strike was filed by BRILEY which motion was granted on April 2, 1991. ROWAN applied for writs to Louisiana's Third Circuit Court of Appeals which application was denied on May 7, 1991. ROWAN then applied to the Louisiana Supreme Court which application was granted on July 9, 1991, and the case was consolidated with PARKER.

C. THE CONSOLIDATED DECISIONS

In both cases, ROWAN argued to the trial, appellate, and Louisiana Supreme Courts that depriving it of jury trials violated several provisions of the U.S. Constitution including the Supremacy Clause (art. VI, cl. 2), and the admiralty jurisdiction clause (art. III, sec. 2, cl. 1). In its original decision rendered on December 2, 1991, the Louisiana Supreme Court ruled – on state law grounds – that ROWAN was entitled to jury trials in both cases. The constitutional issues were, therefore, not reached. On rehearing, ROWAN continued to urge its entitlement to jury trials on state law grounds and pointed out that an adverse decision would be constitutionally unacceptable under the Supremacy Clause (including an equal protection analysis) and the exclusive grant of admiralty jurisdiction to the federal courts (U.S. Const., art. III, sec. 2, cl. 1, and 28 U.S.C. § 1333). The Louisiana Supreme Court noted:

> Defendant's alternative argument is that if 1732(6) is construed as encompassing Jones' Act claims, then the statute itself violates the Supremacy clause of the United States Constitution, the seventh amendment, and the provisions of 28 U.S.C. 1333. The arguments which he uses to support these contentions do not persuade us.
>
> (Appendix 1, page App. 10).

The Louisiana Supreme Court therefore either explicitly or implicitly found no constitutional infirmity to La. Code Civ. Proc. art. 1732(6) and held ROWAN was not entitled to a jury trial in either case. It concluded that jury trials of Jones Act cases are not required in state court, or,

at the very least, Jones Act employers have no voice in determining the mode of trial.

It is to these decisions that this Petition is directed.

ARGUMENT

Until now the determination of the right to a jury trial under the Jones Act has sailed on relatively smooth, clear waters. This Court's pronouncements are believed to have provided clear and consistent guidance. It has been stated, on occasions too numerous to cite, that Jones Act cases pursued "in admiralty" do not receive jury trial treatment, e.g., *Panama R. Co. v. Johnson*, 264 U.S. 375, 44 S.Ct. 391 (1924). In admiralty, neither party is entitled to a jury trial. That proposition is not questioned by this Petition.

Until now, it seemed equally settled that if a seaman elected to pursue his claim in a civil action (at common law) that choice carried with it the right – of either plaintiff *or* defendant – to trial by jury. *Curtis v. Loether*, 415 U.S. 189, 94 S.Ct. 1005 (1974.)[1] Petitioner does not question that proposition either. But the Louisiana

[1] Wright and Miller, *Federal Practice and Procedure* (1971), vol. 9, sec. 2315, page 76: "If jurisdiction can alternatively be based on a federal question, or on diversity and the necessary jurisdictional amount, *either party* may demand a jury trial unless plaintiff has chosen to identify the claim as an admiralty or maritime claim, . . . " (emphasis supplied); C. Wright, *Law of Federal Courts* (1976), page 455: "The Jones Act remedy is 'legal' and there is a right of trial by jury". See also *Dice v. Akron, C. & Y.R. Co.*, 342 U.S. 359, 72 S.Ct. 312 (1952).

Supreme Court does and has in these cases! In one fell swoop the clear, smooth waters became turbulent and muddy when the Louisiana legislature enacted Code of Civil Procedure art. 1732(6). Its actions, as interpreted by the Louisiana Supreme Court, confused what had been clear and destroyed what decades of jurisprudence had wrought. It announced that henceforth Congress' express recognition of a jury trial right in seamans' claims under the common law has no significance in its courts.

Admittedly, on the limited and specific issues presented, these cases present issues of first impression to this Court. Due to the novel – but yet gravely significant – issues at hand, there is a dearth of historical guidance *directly on point*. That does not mean that the answers are not clear to discern. This is not a case where federal circuit courts are in conflict. This is not a case where the various states are at odds. This *is* a case where Louisiana apparently stands alone. An examination of the existing jurisprudence demonstrates how detrimental Louisiana's position would be to the Constitution, federalism, and principles of uniformity. Supreme Court Rule 10.1(c), 28 U.S.C.

For the reasons hereinafter discussed the Louisiana position as reflected in its code of procedure and by its decisions herein, cannot be allowed to stand as a beacon for future mariners to follow. The U.S. Constitution and its attendant principles require this Court to find article 1732(6) invalid on a number of grounds. In so stating, petitioner is mindful that it is not the prerogative of this Court to re-examine the Louisiana Supreme Court's interpretation of the meaning of its own state statute. Petitioner recognizes that this Court must accept such

interpretation on state law grounds. *Landmark Communications, Inc. v. Virginia*, 435 U.S. 829, 98 S.Ct. 1535 (1978); *Brown v. Ohio*, 432 U.S. 161, 97 S.Ct. 2221 (1977). The Court is not being asked to violate those principles. This Court can and must, however, independently evaluate the validity of any states' statute in a federal constitutional context. *Franks v. Delaware*, 438 U.S. 154, 98 S.Ct. 2674 (1978). It is that independent evaluation which petitioner seeks – indeed feels is demanded by the Constitution itself.

A. THE SUPREMACY CLAUSE AND EQUAL PROTECTION

Article VI, cl. 2, of the U.S. Constitution sets forth a standard against which Louisiana law must be measured. State laws and judicial interpretations may not contravene the Supreme Law of the Land as set forth in the Constitution and federal enactments. *Howlett v. Rose*, 496 U.S. 356, 110 S.Ct. 2430 (1990). Federal law cannot be curtailed, circumvented, or modified by state procedure. *Garner v. Teamsters, Chaffeurs and Helpers Local Union No. 776 (A.F.L.)*, 346 U.S. 485, 74 S.Ct. 161 (1953). For example, state statutes are void (preempted) when they conflict with federal law and they make compliance with both federal and state law an impossibility. *English v. General Elec. Co.*, 496 U.S. 72, 110 S.Ct. 2270 (1990); *Maryland v. Louisiana*, 451 U.S. 725, 101 S.Ct. 2114 (1981). State law is preempted if it stands as an obstacle to the accomplishment of the full intent and purposes of Congress in enacting federal legislation. *English v. General Elec. Co.*, supra; *Boyle v. United Technologies Corp.*, 487 U.S. 500, 108

S.Ct. 2510 (1988); *Pacific Gas & Elec. Co. v. State Energy Resources Conservation and Dev. Comm'n.*, 461 U.S. 190, 103 S.Ct. 1711 (1983).

Louisiana has determined that a Jones Act claim may find its way into state court as a civil action pursuant to the savings to suitors clause. The Jones Act explicitly recognizes the right to trial by jury if a civil action is elected. It specifically provides for an election historically identified as an election between (1) pursuing a claim in a federal admiralty forum (no jury), or (2) pursuing a civil action (in state or federal court with a jury). *Yates v. Dann*, 223 F.2d 64 (3rd Cir. 1955); *Balado v. Lykes Bros. S.S. Co.*, 179 F.2d 943 (2nd Cir. 1950); and *McCarthy v. American Eastern Corp.*, 175 F.2d 724 (3rd Cir.), *cert. den.*, 338 U.S. 868, 70 S.Ct. 144 (1949).[2]

The Jones Act gives this right of election – between the traditional, pure and exclusively federal admiralty claim (no jury) and the ordinary civil action (jury) – to the plaintiff. If the plaintiff elects option one – a pure admiralty claim – neither he nor the defendant would get a trial by jury. *Panama R. Co. v. Johnson*, supra; *The Glide*, 167 U.S. 606, 17 S.Ct. 930 (1897); *American Steamboat Co. v. Chase*, 83 U.S. (16 Wall.) 522 (1873); *Trans-Asiatic Oil Ltd. S.A. v. Apex Oil Co.*, 743 F.2d 956 (1st Cir. 1984).

The other option is one "at law". Once the seaman elects to pursue his claim at law (a civil action) the right

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[2] (see also Gilmore and Black, *The Law of Admiralty*, 2d Ed. (1975), p. 343: "The present state of the law is that the only election required under the Jones Act is between a suit in admiralty (without a jury) and a civil action in state or federal court (with a jury).")

of trial by jury attaches. *Fitzgerald v. United States Lines Co.*, 374 U.S. 16, 83 S.Ct. 1646 (1963); *Yates v. Dann*, supra; and *Balado v. Lykes Brothers S.S. Co.*, supra. This is most assuredly true in federal court where the right to a jury trial has a direct constitutional dimension. *Chauffeurs, Teamsters & Helpers, Local No. 391 v. Terry*, 494 U.S. 558, 110 S.Ct. 1339 (1990). It is this option which Louisiana adversely impacts by finding such jury trial right is not applicable in state court.

For over a century it has been held the fourteenth amendment to the U.S. Constitution does not generally incorporate the seventh amendment and therefore its jury trial guarantee is not directly applicable to the states. *Pearson v. Yewdall*, 95 U.S. 294 (1877); and *Walker v. Sauvinet*, 92 U.S. 90 (1875). That, however, does not answer the question in this peculiar scenario.

This is not a case where a federal statute creates a cause of action without addressing the jury trial issue. If the Jones Act had made no reference to jury trial at all then perhaps the long line of *general* jurisprudence denying seventh amendment rights in state court would be dispositive.[3] In this case, however, the Jones Act

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[3] (In *Minneapolis and St. Louis Railroad Co. v. Bombolis*, 241 U.S. 211, 36 S.Ct. 595 (1916), this Court held that the Seventh amendment did not apply to state courts even when enforcing rights under the Federal Employers' Liability Act (45 U.S.C. § 51, et. seq.) (commonly referred to as FELA). It is important to note, however, that the FELA is not a statute specifically reciting a right to trial by jury, nor does it involve a savings to suitors case. It should also be noted that the *Bombolis* decision's continuing viability has been questioned. *Dice v. Akron, C. & Y.R. Co.*, supra.)

explicitly recognizes the right to trial by jury in an action at law. Such explicit inclusion must mean something. Some insight into its significance can be found in *Lehman v. Nakshian*, 453 U.S. 156, 101 S.Ct. 2698 (1981). In *Lehman*, this Court was asked whether or not a claimant had a right to a jury trial against the federal government under the Age Discrimination in Employment Act (29 U.S.C. § 621, et seq.) (West 1992). In finding such was not available under § 633a(c)(2), the Court noted the section did not give an explicit grant, whereas § 626(c) (relating to other parties) did. It was the presence or absence of the language upon which this Court's decision turned. It is only logical to conclude that when Congress expressly recognizes the right to jury trial in a statute, it has clearly evidenced its desire to have the seventh amendment apply. In the context of the Jones Act, the seventh amendment would follow civil actions into whatever forum – state or federal – a seaman chooses to file. See *Dice v. Akron, C. & Y.R. Co.*, supra.

The proposition that, in federal court, a law-side claim incorporates the seventh amendment jury trial right, can hardly be questioned. *Jacob v. New York*, 315 U.S. 752, 62 S.Ct. 854 (1942); *Johnson v. Penrod Drilling Co.*, 469 F.2d 897 (5th Cir. 1972), *aff'd.*, 510 F.2d 234 (1975), *cert. den.*, 423 U.S. 839, 96 S.Ct. 69 (1975); and *Harrison v. Flota Mercante Grancolombiana, S.A.*, 577 F.2d 968 (5th Cir. 1978). This jury trial right, in a Jones Act context, is an integral and explicit part of the remedy. *Schulz v. Pennsylvania R. Co.*, 350 U.S. 523, 76 S.Ct. 608 (1956); *Atlantic & Gulf Stevadors, Inc. v. Ellerman Lines, Ltd.*, 369 U.S. 355, 82 S.Ct. 780 (1962); *Rogers v. Missouri Pacific R. Co.*, 352 U.S. 500, 77 S.Ct. 443 (1957); *Dice v. Akron, C. & Y.R. Co.*, supra.

In state courts, via the savings to suitors clause, important rules which form an integral part of the substantive federal law must be applied. *Moore v. McCormick Co.*, 317 U.S. 239, 63 S.Ct. 246 (1942). This Jones Act jury trial right is such a rule. As stated by this Court in *Atlantic & Gulf Stevadors, Inc.*, supra:

> As in cases under the Jones Act, 46 USCA § 688 (*Schulz v. Pennsylvania R. Co.* 350 U.S. 523, 76 S.Ct. 608, 100 L.Ed. 668; *Senko v. La Crosse Dredging Corp.*, 352 U.S. 370, 77 S.Ct. 415, 1 L.Ed.2d 404) and under the Federal Employers' Liability Act, 45 USCA § 51, et seq. (*Tennant v. Peoria & P.U.R. Co.*, 321 U.S. 29, 64 S.Ct. 409, 88 L.Ed. 520; *Ellis v. Union Pacific R. Co.*, 329 U.S. 649, 653, 67 S.Ct. 598, 600, 91 L.Ed. 572; *Dice v. Akron, C. & Y.R. Co.*, 342 U.S. 359, 72 S.Ct. 312, 96 L.Ed. 398; *Rogers v. Missouri Pacific R. Co.*, 352 U.S. 500, 77 S.Ct. 443, 1 L.Ed.2d 493), trial by jury is part of the remedy.
>
> (369 U.S. at 360).

No state should be allowed to reduce the value of such an integrally-bound right. As this Court noted in *Howlett v. Rose*, supra:

> "Federal law is enforceable in state courts not because Congress has determined that federal courts would otherwise be burdened or that state courts might provide a more convenient forum – although both might well be true – but because the Constitution and laws passed pursuant to it are as much laws in the States as laws passed by the state legislature."
>
> (110 S.Ct. at 2438).

This principle is as old as this Republic. As set forth in *Worchester v. Georgia*, 31 U.S. (6 Pet.) 515, 571 (1832):

> "Where, by the Constitution, the power of legislation is exclusively vested in congress, they legislature for the people of the union, and their acts are as binding as are the constitutional enactments of a state legislature on the people of the state."

The right to trial by jury as expressly recited in the Jones Act should be treated in a Louisiana state court as if the Louisiana legislature had authored it.

All of these long-standing principles must, in and of themselves, result in the conclusion that the Jones Act jury trial right is a constitutional right and one which may not be deprived by the states. This conclusion is buttressed by this Court's refusal to allow state standards to be used in evaluating seaman trials. See *Rogers v. Missouri Pacific Railroad Co.*, supra, and its progeny. It is a reasonable corollary that if the review provisions of the seventh amendment follow a federally-created right into state court, so then must the fundamental prerequisite to such review – the right to trial by jury itself.

PARKER and BRILEY may suggest that on the civil side only they, and they alone, hold the key to unlocking this jury trial right. This is seemingly the opinion of only one panel of the Fifth Circuit Court of Appeals. *Rachal v. Ingram Corp.*, 795 F.2d 1210 (5th Cir. 1986). The definitive nature of that decision is highly questionable. See *Curtis v. Loether*, supra; Wright and Miller, *Federal Practice and Procedure* (1971), vol. 9, sec. 2315, p. 76; *Johnson v. Penrod Drilling Co.*, supra; *Harrison v. Flota Mercante Grandcolumbiana, S.A.*, supra. In *Rachal*, the Fifth Circuit recited that

in Jones Act claims brought in federal court on the law-side, and absent diversity, only the seaman can choose whether or not a jury trial will be had.[4] *Rachal* is wrong for several reasons.

First, it is an incorrect interpretation of the statute. As noted before, the exclusive "election" afforded a seaman is not a double election but a single election. The seaman has the right to elect between (1) pursuit of his claim in an admiralty forum (without a jury), or (2) pursuit of his claim in a civil action (in state or federal court with a jury) – PERIOD. There is nothing in the statute that recites once the seaman has elected to pursue a civil action he has a further election to decide between judge or jury. Indeed, that election was made when he chose to pursue a civil action instead of an admiralty one. In fact, concluding that the seaman has two (2) choices flies in the face of appropriate grammatical rules.[5]

Second, *Rachal* should not guide this Court when compared to other decisions out of the very same circuit.

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[4] While *Linton v. Great Lakes Dredge and Dock Co.*, ___ F.2d ___ (5th Cir. 1992), WL 137438 (June 22, 1992), is another decision along the same lines it merely echoed *Rachal's* conclusions and extended its rationale to claims filed in state court. Such a decision is not surprising in light of the fact that Fifth Circuit panels must follow other panel decisions unless and until reversed by the circuit court *en banc*, or by this Court. *Placid Oil Co. v. Federal Energy Regulatory Comm'n.*, 666 F.2d 976 (5th Cir. 1982), *rehearing den.*, 673 F.2d 1322.

[5] "It follows that 'election' in the Jones Act has its normal legal meaning of 'a choice between' two inconsistent courses of action." (Gilmore and Black, *The Law of Admiralty*, 2d. Ed. (1975) Sec. 6-23, page 342.)

Rachal recognized that *Johnson v. Penrod Drilling Co.*, supra, and *Harrison v. Flota Mercante Grancolombiana, S.A.*, supra, held that *both parties* had an independent basis for a jury trial in an "at law" (civil action) claim. *Rachal* erroneously concluded, however, that since the Jones Act jury trial right is *only statutory*; and since no basis, such as diversity of citizenship, existed to allow the defendant to invoke the seventh amendment, that amendment was not impacted. In other words, the *Rachal* panel concluded that the seventh amendment did not attach to purely statutory causes of action. Such a conclusion is blatantly wrong. In *Chaffeurs, Teamsters & Helpers, Local No. 391*, supra, this Court held that it is the nature of the action which determines the entitlement to a jury trial and not how the cause of action was created.

The incorporation of the terms "right of trial by jury" into the Jones Act itself does not *alone*, ROWAN suggests, create a jury trial right. Rather, such incorporation simply extends the seventh amendment right into whatever "legal" forum the plaintiff chooses to file. Such seems to be the implicit holding of this Court in *Lehman v. Nakshian*, supra; and *Galloway v. U.S.*, 319 U.S. 372, 63 S.Ct. 1077 (1943). Although neither the *Galloway* nor *Lehman* decisions are specifically on point, the logic employed would apparently embellish any statutorily recognized jury trial right with seventh amendment benefits. In effect, the incorporating language requires that the seventh amendment follow the Jones Act into state or federal court in a civil action. Once the conclusion is reached that this jury trial right is one of seventh amendment magnitude, then this Court has already decided that

a constitutional right to a jury trial is one that is available to *either* party. *Curtis v. Loether*, supra.

Third, even should this Court conclude that the seaman and the seaman alone has the right to decide whether or not a jury trial will be had in an "at law" claim, article 1732(6) nevertheless violates the principles of supremacy. That Article does not even give the plaintiff a right to select a trial by jury. Rather, so long as a claim is identified and/or colorably described as an admiralty or maritime claim, even the seaman cannot demand a jury trial in a Louisiana state court forum. See article 1732(6); and *Birden v. Dravo Mechling Corp.*, 560 So.2d 605 (4th Cir. 1990).

It is also abundantly clear that the Louisiana Supreme Court has once again flaunted the requisites of federalism. See *Ikospentakis v. Thalassic Steamship Agency*, 915 F.2d 176 (5th Cir. 1990). Such a conclusion is evidenced by the discriminatory effect the decisions will have if allowed to stand. By these decisions Louisiana has seen fit to deprive Jones Act litigants of jury rights – rights which remain available to any and *all* state law litigants (plaintiffs *and* defendants) pursuing claims in state court. Such discrimination is unacceptable. This too is a principle of long-standing duration. *Dice v. Akron C. & Y.R. Co.*, supra; *Missouri ex rel Southern R. Co. v. Mayfield*, 340 U.S. 1, 71 S.Ct. 1 (1950); *Miles v. Illinois C.R. Co.*, 315 U.S. 698, 62 S.Ct. 827 (1942); *Pufahl v. Parks*, 299 U.S. 217, 57 S.Ct. 151 (1936); *McKnett v. St. Louis & S.F.R. Co.*, 292 U.S. 230, 54 S.Ct. 690 (1934).

A finding that a state statute is invalid in discriminating against federal causes of action is even more appropriate when the statute on its face sets forth that discrimination. In this case, article 1732(6) specifically identifies federal claims for "special" treatment. Other state statutes with such specific reference have been previously found invalid.[6] As stated in *Rockton Rion Ry. v. Davis*, supra:

> "The law seems well settled that a statute . . . of a state is unconstitutional when the statute is directed exclusively at claims arising under a federal law. And particularly is this true when the state statute . . . is discriminatory in its effect in favor of state claims and against federal claims."
>
> (159 F.2d at 293).

In sum, the Louisiana decision cannot pass the Constitution's litmus tests for validity. The Supremacy clause alone, and together with principles of equal protection should sound its death knell. Its direct and irreconciliable conflict with federal law must be erased.

B. EXCLUSIVE ADMIRALTY JURISDICTION

The only possible way, it would seem, to deprive Jones Act litigants of their jury trial entitlement is to

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[6] See *Caldwell v. Alabama Dry Dock & Ship Building*, 161 F.2d 83 (5th Cir. 1947); *Rockton Rion Ry. v. Davis*, 159 F.2d 291 (4th Cir. 1946); *Republic Pictures Corp. v. Cappler*, 151 F.2d 543 (8th Cir. 1945); and *Wolf Sales Co. v. Rudolph Wurlitzer Co.*, 105 F.Supp. 506 (D. Colo. 1952).

conclude that 1732(6) seeks to create pure admiralty jurisdiction in a state forum. While decrying such a conclusion, the Louisiana Supreme Court's references to Rule 9(h) of the Federal Rules of Civil Procedure – a vehicle which exists in federal court for such specific selection – makes such a conclusion plausible. However, pure admiralty jurisdiction, is a power reserved to the federal courts and the federal courts alone. *The Glide*, supra; *American Steamboat Co. v. Chase*, supra; *Trans-Asiatic Oil Limited, S.A. v. Apex Oil Co.*, supra; see also 28 U.S.C. § 1333. The savings to suitors clause saves a jury trial in state court. It does not "save" a non-jury trial – a remedy which is only available in an admiralty forum. By incorporating a traditionally and exclusively recognized admiralty right – a non-jury trial – the Louisiana statute has invalidly usurped the exclusive power of the federal courts over pure admiralty claims. It accordingly would be invalid on that basis.

CONCLUSION

If Jones Act, admiralty and maritime claims are to be pursued in civil actions, the parties have the fundamental right to know that they can ask a jury of their peers to sit in judgment no matter where they may go. The right to trial by jury in state courts should not be made to depend upon whether suit is filed in Alabama, North Carolina, or Louisiana. Federal maritime law calls for federal uniform application. The Admiralty must reign supreme and not be subject to the idiosyncracies of any particular state or forum. The cases at hand stand as stellar examples of the

encroachment of state law upon the admiralty and maritime mandate of uniformity. Louisiana has, in effect stated that it will try Jones Act cases in the manner and means by which it and it alone sees fit. Louisiana's offense here is no less egregious than that found in *Chemical and Atomic Oil Workers v. Mobil Oil Corp.*, 426 U.S. 407, 96 S. Ct. 2140 (1976) (Texas right to work laws); or *Offshore Logistics Corp. v. Tallentire*, 477 U.S. 207, 106 S. Ct. 2485 (1986) (state wrongful death). If the Supremacy Clause is to mean anything, article 1732(6) must be struck down.

Where doubt exists as to the viability of any statute, the supreme decision-making litmus test is the principle of uniformity. See *Moragne v. States Marine Lines, Inc.*, 398 U.S. 375, 90 S.Ct. 1772 (1970); *Offshore Logistics, Inc. v. Tallentire*, supra; *Director, OWCP v. Perini North River Associates*, 459 U.S. 297, 103 S.Ct. 634 (1983).

At the very least, there can be no question but that article 1732(6) discriminates blatantly, directly, and explicitly against federal, admiralty and maritime claims. It has isolated those claims for "special treatment". Jury trials are deprived not because the jurisdictional amount has not been reached; not because the defendant is a party against whom jury trials are unavailable; and not because any of the other limitations set forth in article 1732 are found to exist. The sole and exclusive criteria for jury trial deprivation is the fact that the claims derive their very existence from federal law. A more obvious and egregious discrimination cannot be found to exist.

Furthermore, attempting to avoid the effects of the Supremacy and Equal Protection Clauses cannot be successfully urged by labeling article 1732(6) a Rule 9(h) equivalent. Rule 9(h) of the Federal Rules of Civil Procedure is a procedural means by which the exclusive jurisdiction of the federal admiralty courts can be invoked. No such jurisdiction exists in state court.

With this case, this Court can send a message. Federalism concerns are paramount. Uniformity must be fostered. The Petitions for Writs of Certiorari should be granted.

Respectfully submitted,

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APPENDIX 1

SUPREME COURT OF LOUISIANA

No. 91-CC-1271

SPENCER PARKER

Versus

ROWAN COMPANIES, INC.

On Writ of Certiorari to the Court of Appeal,
Third Circuit, Parish of St. Mary

ON REHEARING

MAY 26 1992

CALOGERO, Chief Justice.

Injured seamen often, if not routinely, couple their Jones Act injury claim with claims for unseaworthiness, and wages, maintenance and cure. When suit is brought in federal court, the plaintiffs alone have the choice of a judge or jury trial, depending upon the nature of their claims. If the claim is cognizable only in admiralty, then the distinctive admiralty procedures apply which, among other aspects, precludes the right to a trial by jury.[1] If, however, the claim could be brought in federal court on some other jurisdictional basis besides admiralty (e.g., diversity, Jones Act), plaintiffs may choose whether to

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[1] Originally, separate rules of civil procedure applied to admiralty cases. In 1966, the Federal Rules of Civil Procedure were amended to provide unified rules for admiralty and non-admiralty cases. Notes of Advisory Committee on Rules, 39 F.R.D. 73 (1966). The distinctive features of admiralty practice were preserved, however, and Rule 38(e) governs the lack of a right to trial by jury in admiralty suits.

invoke the special admiralty procedures or whether to have the case tried as a non-maritime civil action. In order to permit the invoking of admiralty procedures, Rule 9(h) of the Federal Rules of Civil Procedure requires the pleading to contain an express statement identifying the claim as an admiralty or maritime claim, thereby facilitating a choice of a bench trial.[2] The Rule 9(h) election is not irrevocable; the petition may be amended to add or withdraw the election. *Romero v. Bethlehem Steel Corp.*, 515 F.2d 1249, 1252-53 n.1 (5th Cir. 1975). See also *Forbes v. A & P Boat Rentals, Inc.*, 689 F.Supp. 625 (E.D. La. 1988) where the court allowed the plaintiffs to amend their complaint at the beginning of trial to delete the Rule 9(h) designation in order to assert their right to a jury trial where the defendant was not prejudiced.

If some other independent basis for jurisdiction exists, plaintiffs may opt for a jury trial. One of the means

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[2] Rule 9(h) of the Federal Rules of Civil Procedure provides:

> Admiralty and Maritime Claims. A pleading or count setting forth a claim for relief within the admiralty and maritime jurisdiction that is also within the jurisdiction of the district court on some other ground may contain a statement identifying the claim as an admiralty or maritime claim for the purposes of rules 14(c), 38 (e) [no jury trial], 82, and the Supplemental Rules for Certian [sic] Admiralty and Maritime Claims. If the claim is cognizable only in admiralty, it is an admiralty or maritime claim for those purposes whether so identified or not. The amendment of a pleading to add or withdraw an identifying statement is governed by the principles of Rule 15. . . .

of getting the case tried to a jury is under the Jones Act which specifically gives injured seamen a right to trial by jury.[3] Additionally, if there are both Jones Act claims and traditional maritime claims joined together in one suit, plaintiffs may choose to have the entire case tried to a jury, or may withdraw the jury demand. *Fitzgerald v. United States Lines Co.*, 374 U.S. 16, *rehearing denied*, 375 U.S. 870 (1963). The court in *Rachal v. Ingram Corp.*, 795 F.2d 1210, 1213 (5th Cir. 1986), discussing a nondiversity action (i.e., where no other basis exists for the right to a jury trial except the Jones Act) explained:

> "When non-jury admiralty claims are joined in the same action, they are treated as pendent to the Jones Act claim, and are tried together for convenience."

Thus, plaintiffs alone have control over whether the case is to be tried to a judge or a jury.

In 1988, with Act 147, Louisiana apparently attempted to track the federal system and give injured seamen who choose to file in state court the same choice of jury or bench trial as they would have in federal

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[3] 46 U.S.C. app. § 688 governs Jones Act claims and provides in part:

> Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of *trial by jury*, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply. . . . (emphasis added)

court.[4] The way the Legislature attempted to accomplish this was by amending La. C.C.P. art. 1732, an article which places limits upon the availability of jury trials. The amendment added one additional instance in which trial by jury "shall not be available." If plaintiffs bring "a suit on an admiralty or general maritime claim under federal law" in state court under a federal "saving to suitors" clause, and if plaintiffs designate that suit as an admiralty or general maritime claim, then "a trial by jury shall *not* be available "[5] Conversely, if plaintiffs do *not* so

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[4] The author of the bill which became Act 147 was Representative Hunt Downer. His stated purpose was to give seamen filing suit in state court the same choice of judge or jury whcih [sic] prevails in federal court. He explained the bill to the House Civil Law & Procedure Committee on May 10, 1988 as follows:

> House Bill 620 . . . is a simple Bill. . . . So all I'm trying to do is track exactly the federal rules of procedure in essence saying you as the complainant or the seaman have the right to control the actions of whether or not you want a jury trial or not.

[5] Article 1732(6), entitled "Limitation upon jury trials," provides:

> A trial by jury shall not be available in:
>
> . . .
>
> (6) A suit on an admiralty or general maritime claim under federal law that is brought in state court under a federal "saving to suitors" clause, if the plaintiff has designated that suit as an admiralty or general maritime claim.

designate the lawsuit, the exception is inapplicable and a trial by jury shall be available, or "recognized," as C.C.P. art. 1731 recites.[6] The choice in Louisiana affecting bench or jury trial then, is with the plaintiffs (i.e., whether to designate the suit as an admiralty claim or not), just as it is in federal court, if the statute accomplishes what its author intended.

The facts of this case are set forth in our original opinion. Parker's petition which was filed after he sustained injuries while working on an offshore oil rig (the "Louisiana") stated that the action was brought "under the Jones Act/General Maritime Law and the Savings to Suitors Clause."[7] He sought remedies based on unseaworthiness, maintenance and cure, and the Jones Act. Parker requested a jury trial in his original petition.

Several months later in an amended and supplemental petition, Parker requested a bench trial under the C.C.P.art. 1732(6) exception. Answering Parker's

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[6] Article 1731 states in part:

> A. Except as limited by Article 1732, the right of trial by jury is recognized.

[7] The "saving to suitors" clause referred to in Parker's petition is found in 28 U.S.C. § 1333 stating in part:

> The district courts shall have original jurisdiction, exclusive of the courts of the States, of:
>
> (1) Any civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled.

amended petition, Rowan asserted its entitlement to a jury trial. Plaintiff then filed a motion to strike Rowan's jury trial request on the ground that 1732(6) does not provide for a jury trial when the plaintiff's claim is designated as an admiralty or general maritime claim, and is brought under the "saving to suitors" clause. The district court granted plaintiff's motion to strike the jury. Rowan sought a writ of review to the court of appeal. The writ was denied based on the holding in *Heinhuis v. Venture Assoc.*, 558 So.2d 1244 (La. App. 1st Cir.), *writ denied*, 559 So.2d 1369, 1385 (La. 1990).

The question that has arisen in this case is whether the portion of plaintiff's claim which involves his rights under the Jones Act is "an admiralty or general maritime claim under federal law" within the meaning the La. C.C.P.art. 1732(6). The First Circuit Court of Appeal has twice determined, both in *Sons v. Inland Marine Service, Inc.*, 577 So.2d 225 (1st Cir. 1991) and in *Heinhuis v. Venture Assoc.*, 558 So.2d 1244 (La. App. 1st Cir.), *writ denied*, 559 So.2d 1369, 1385 (La. 1990), that the Jones Act claim is an admiralty or general maritime claim under federal law. The Third Circuit apparently agrees, for it denied defendant's application for writs in this case, citing *Heinhuis*. This court on original hearing determined that a Jones Act claim is not a maritime or admiralty claim, but a claim at law. Additionally, we held that state courts have concurrent jurisdiction of Jones Act claims pursuant to federal statute, not the "saving to suitors" clause. That conclusion, too, barred application of Article 1732(6). We granted rehearing to reconsider this decision on original hearing.

Contrary to what the majority concluded on original hearing, it seems to our newly constituted majority now rather clear that Jones Act claims are admiralty and maritime claims. The United States Supreme Court said as much in *Panama Railroad Co. v. Johnson,* 264 U.S. 375 (1924):

> Rightly understood, the statute neither withdraws injuries to seamen from the reach and operation of the maritime law, nor enables the seamen to do so. On the contrary, it brings into that law new rules drawn from another system and extends to seamen a right to invoke, at their election, either the relief accorded by the old rules or that provided by the new rules. The election is between alternatives accorded by the maritime law as modified, and not between that law and some nonmaritime system.

Subsequent to *Panama Railroad Co. v. Johnson,* the Court stated this principle even more clearly:

> [The Jones Act] is to be liberally construed to carry out its full purpose, which was to enlarge admiralty's protection to its wards. . . . *Being an integral part of the maritime law,* rights fashioned by it are to be implemented by admiralty rules not inconsistent with the Act.

Garrett v. Moore-McCormack Co., 317 U.S. 239, 248 (1942) (emphasis added) (citations omitted).

Our interpretation of *Panama* and our conclusion in this respect is shared by the authors G. Gilmore and C. Black in *The Law of Admiralty* 340, 353 (2d ed. 1975), the authors state:

> In [*Panama Railroad*] to save the Jones Act from "grave" constitutional objections, the Court decided that the Jones Act merely added a new remedy to the maritime law (over which admiralty courts have jurisdiction) and was not an attempt to create an exclusive common-law remedy for a maritime tort.

See also T. Schoenbaum, *Admiralty and Maritime Law* 182 (1987) ("The *Jones Act] seaman* has the option of suing in federal admiralty jurisdiction or of suing at law with the right of trial by jury in either the state or federal courts.") (emphasis added).

The second pertinent question we treat here is whether Jones Act claims are "brought in state court under [the] 'saving to suitors' clause." Defendants argue that they are not, thus, 1732(6) is inapplicable, and consequently Jones Act claims constitute civil actions in which jury trials are available to both parties. This is erroneous. The Supreme Court in *Panama Railroad Co. v. Vasquez*, 271 U.S. 557 (1926) stated:

> The sole question presented is whether state courts may entertain [Jones Act] actions, the defendant's contention being that they are cognizable only in the federal District Courts.
>
> [The Jones Act], as heretofore construed, changes the maritime law of the United States by giving to seamen injured through the negligence of their employers . . . the rights given to railway employees . . . by the [FELA]. And the procedural provisions therein have been construed – when read in connection with §§ 24 (third) and 256 (third) of the Judicial Code, and in light of constitutional rules respecting admiralty and maritime jurisdiction – to mean that

the new substantive rights may be asserted and enforced either in actions in personam against the employers in courts administering common-law remedies, with a right of trial by jury, or in suits in admiralty in courts administering remedies in admiralty, without trial by jury; but always taking the changed maritime law as the basis and measure of the rights asserted.

The sections of the Judicial Code just cited, while investing the Federal district courts with jurisdiction, "exclusive of the courts of the several states," of all "civil causes of admiralty and maritime jurisdiction," *contain an excepting clause expressly "saving to suitors in all cases the right to a common-law remedy where the common law is competent to give it."* . . . [I]t uniformly has been regarded as permitting such actions to be brought in either the Federal courts or the state courts, as the possessor of the right may elect . . .

In so saying, we must be understood as fully recognizing what often has been held in other cases – that the saving clause does not include suits in rem or other forms of proceeding unknown to the common law. . . .But *an action in personam to recover damages for tort is one of the most familiar of the common-law remedies; and it is such a remedy at law that is contemplated by [the Jones Act]* and invoked in this case.

The defendant insists that the saving clause refers only to rights recognized by the maritime law as existing in 1789, when the clause first was adopted, and therefore does not include rights brought into the maritime law by subsequent legislative changes. *We think the [saving] clause has a broader meaning, looks to the future as*

> *well as the past and includes new as well as old rights, if only they are such as readily admit of assertion and enforcement in actions in personam, according to the course of common law.*

Id. at 559-61. Thus, the Supreme Court explained that Jones Act cases in state court are there via the saving clause. This, too, is our conclusion: Jones Act claims may be brought in state court by virtue of the existence of the saving clause.

In all events, it is our conclusion that the Legislature, in passing the amendment to Article 1732, intended to and did achieve for the plaintiff seaman the same exclusive choice of bench or jury trial in Jones Act cases in state court which prevails in federal court.

Defendant's alternative argument is that if 1732(6) is construed as encompassing Jones Act claims, then the statute itself violates the supremacy clause of the United States Constitution, the Seventh Amendment, and the provisions of 28 U.S.C. § 1333. The arguments which he uses to support these contentions do not persuade us. The Seventh Amendment's right to trial by jury in civil cases has not been extended to the states through the Fourteenth Amendment. *Olesen v. Trust Co. of Chicago*, 245 F.2d 522 (7th Cir.), *cert. denied*, 355 U.S. 896 (1957). *See also Letendre v. Fugate*, 701 F.2d 1093, 1094 (4th Cir. 1983) (citations omitted). A denial of a jury trial in a state court civil proceeding does not violate the due process clause. *Id.* Therefore, it is within the province of the states to establish their own rules for the availability of jury trials. This court, in *Lavergne, supra*, rejected the reverse-Erie argument, stating:

> It has long been established that a state court, having concurrent jurisdiction with the federal courts as to in personam admiralty claims, is free to adopt such remedies and attach to them such incidents as it sees fit so long as it does not attempt to modify or displace essential features of the substantive maritime law . . . Affording a litigant a right to trial by jury in our state courts does not . . . modify or displace essential features of the substantive maritime law. As stated by Judge (now Justice) Blanche in *Hebert v. Diamond M Company* [367 So.2d 1210 (La. App. 1st Cir. 1978)], '[a] jury trial is simply a method of enforcing substantive rights. As such, it is purely remedial . . .

371 So.2d at 810 (citations omitted). Similarly, granting a Jones Act seaman a right to a state court bench trial does not "modify or displace essential features of the substantive maritime law."

Concerning an incidental assertion in this litigation concerning the respective plaintiffs[8] that because one of them[9] did not expressly designate, at the inception of his

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[8] Consolidated with this case is Anthony R. Briley v. Rowan Companies, Inc. et al. for which we are rendering an opinion on this same date.

[9] Defendant asserted that Briley did not designate his case as an admiralty or maritime claim at the outset of the lawsuit. The jury request in that lawsuit came from defendant. Thereafter, Briley filed a motion to strike defendant's jury request invoking the exception in Article 1732(6). The only difference from the instant case is that here Parker initially requested a jury trial trial [sic], and then later filed an amended and supplemental petition invoking Article 1732(6) in order to facilitate a bench trial.

lawsuit, his choice for a bench trial, that he should be precluded from later asserting this option coincident with his motion to strike the jury request made by defendant, we are not persuaded. Article 1732(6) does not prescribe any procedural method for invoking the exception to a jury trial. It is noteworthy that it does not prescribe that plaintiff must elect the option at the outset of the lawsuit. The counterpart federal procedure is quite liberal in terms of allowing a seaman to amend his petition to change his election (i.e., either to opt for a 9(h) bench trial or for the civil side with jury trial). There is no reason why we should not interpret this Louisiana statute to facilitate plaintiff's choice by permitting him to modify or supplement his petition, as in Parker's case where he amended his pleading after first having sought a jury trial, or as in Briley's case where he made his election coincident with his own motion to strike the defendant's request for a jury trial.

In this case, it is Parker's option regarding whether the case will be heard by jury or by the judge. He chose the former. The district court's ruling granting Parker's motion to strike the jury requested by Rowan was correct, as was the court of appeal's denial of defendant's application for writs. The court of appeal's reliance upon *Heinhuis* was proper. That case was decided correctly.

DECREE

For the foregoing reasons, the ruling of the district court in granting plaintiff's motion to strike defendant's

jury trial request, and the court of appeal's denial of defendant's writ application are affirmed.

AFFIRMED

SUPREME COURT OF LOUISIANA

No. 91-CC-1271

SPENCER PARKER

versus

ROWAN COMPANIES, INC.

On Rehearing

MAY 26 1992

DENNIS, J., assigning additional reasons

I join completely in the opinion of the court issued on rehearing. I write separately only to note that because of confusion among the federal courts in interpretations of Federal Rules of Civil Procedure, Rule 9(h), *compare T.N.T. Marine Service v. Weaver Shipyards, Inc.*, 702 F.2d 585 (5th Cir. 1983) and *Owens-Illinois, Inc. v. U.S. District Court for the Western District of Washington*, 698 F.2d 967 (9th Cir. 1983), parties seeking to invoke the benefits of Code of Civil Procedure article 1732(6) should not simply designate their suit as an admiralty or general maritime claim, but should make a designation substantially similar to the following: "This is an admiralty or general maritime law claim brought pursuant to 28 U.S.C. § 1333, the saving to suitor's clause, and La. C.C.P. art. 1732(6)."

SUPREME COURT OF LOUISIANA

NO. 91-CC-1271

SPENCER PARKER

V.

ROWAN COMPANIES, INC.

ON WRIT OF CERTIORARI TO THE SIXTEENTH JUDICIAL DISTRICT COURT, PARISH OF ST. MARY, STATE OF LOUISIANA HONORABLE RICHARD T. HAIK, PRESIDING

Dec 2 1991

MARCUS, Justice

Spencer Parker was employed by Rowan Companies, Inc. (Rowan) as a crew member of Rowan Louisiana Rig #16. On January 20, 1990, while working on the rig, Parker was involved in an accident that caused severe injuries to his hand. He sued Rowan in state court in a petition entitled "Petition for Damages under the Jones Act and General Maritime Law." He stated in the petition that the action was brought "under the Jones Act/General Maritime Law and the Savings to Suitors Clause." Plaintiff alleged damages under the Jones Act for the negligence of Rowan and under general maritime law for the unseaworthiness of the rig and Rowan's duty to provide him with maintenance and cure benefits. At this time, plaintiff requested a jury trial.

Several months later, plaintiff filed an amended and supplemental petition in which he requested a non-jury trial pursuant to La. Code Civ. P. art. 1732(6). In its answer to the amended petition, Rowan asserted its entitlement to a jury trial. Plaintiff then filed a motion to

strike Rowan's jury trial request on the ground that under La. Code Civ. P. art. 1732(6), Louisiana law no longer recognizes the right to a jury trial when the plaintiff's claim is designated as an admiralty or general maritime claim and brought under the "saving to suitors" clause. The district court granted plaintiff's motion to strike the jury.

Rowan sought a writ of review to the Court of Appeal, First Circuit. The court of appeal denied the writ, based on its earlier holding in *Heinhuis v. Venture Assoc.*, 558 So. 2d 1244 (La. App. 1st Cir.), *writs denied*, 559 So. 2d 1369, 1385 (La. 1990). Upon Rowan's application, we granted certiorari to review the correctness of the district court's ruling to strike the jury.[1] Subsequently, we granted an application in *Briley v. Rowan Cos.* and consolidated it with this case.[2]

The issue in this case is whether La. Code Civ. P. art. 1732(6) is applicable when a plaintiff asserts a Jones Act claim in addition to an admiralty or general maritime claim.

The plaintiff in this case is seeking remedies based on unseaworthiness, maintenance and cure, and the Jones Act. Unseaworthiness and maintenance and cure are general maritime claims that may be brought on the admiralty side of federal court, where there is no right to a trial by jury. *See Cruz v. Hendy Int'l Co.*, 638 F.2d 719, 723

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[1] ___ So. 2d ___ (La. 1991).

[2] 582 So. 2d 1318 (La. 1991).

(5th Cir. 1981); G. Gilmore & C. Black, The *Law of Admiralty* § 6-9 (2d ed. 1975). Pursuant to the "saving to suitors" clause of 28 U.S.C. § 1333,[3] a plaintiff may also bring these maritime claims either on the law side of federal court, if there is an independent basis for subject matter jurisdiction, or in state court. 1B *Benedict on Admiralty* § 2 (7th ed. 1991). If the action is brought on the law side of federal court, either party has a right to request a jury. *See Powell v. Offshore Navigation, Inc.*, 644 F.2d 1063, 1066 (5th Cir.), *cert. denied*, 454 U.S. 972 (1981).

Jones Act claims are governed by federal statute, 46 U.S.C. app. § 688,[4] which allows a jury trial. These claims are within the non-admiralty jurisdiction of the federal court, based on general federal question jurisdiction. *See*

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[3] 28 U.S.C. § 1333 provides:

The district courts shall have original jurisdiction, exclusive of the courts of the States, of:

(1) Any civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled.

(2) Any prize brought into the United States and all proceedings for the condemnation of property taken as prize. court, based on general federal question jurisdiction. *See*

[4] The pertinent provision of 46 U.S.C. app. § 688 states:

> Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and *in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply*. . . . [emphasis added].

Powell, 644 F.2d at 1067. A plaintiff may also choose to bring a Jones Act claim in state court, pursuant to a statutory grant of concurrent jurisdiction.[5]

Suits by seamen in state or federal court typically cumulate unseaworthiness, maintenance and cure, and Jones Act claims. Under Fed. R. Civ. P. 9(h), the plaintiff in federal court with combined Jones Act and general maritime law claims has the option to bring the action within the court's admiralty jurisdiction by designating the claim as a general maritime claim.[6] If the plaintiff

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[5] The Jones Act by its terms incorporates provisions of the Federal Employers' Liability Act (FELA) which states in 45 U.S.C. § 56:

> The jurisdiction of the courts of the United States under this chapter shall be concurrent with that of the courts of the several States.

See G. Gilmore & C. Black, *The Law of Admiralty* § 6-26 (2d ed. 1975).

[6] Fed. R. Civ. P. 9(h) states:

> Admiralty and Maritime claims. A pleading or count setting forth a claim for relief within the admiralty and maritime jurisdiction that is also within the jurisdiction of the district court on some other ground may contain a statement identifying the claim as an admiralty or maritime claim for the purposes of Rules 14(c), 38(e), 82, and the Supplemental Rules for Certain Admiralty and Maritime Claims. If the claim is cognizable only in admiralty, it is an admiralty or maritime claim for those purposes whether so identified or not. The amendment of a pleading to add or withdraw an identifying statement is governed by the principles of Rule 15. The

(Continued on following page)

chooses to designate the entire suit as a general maritime claim, he waives the right to a jury trial for the Jones Act claim. *See Lavergne v. Western Co.*, 371 So. 2d 807, 809 (La. 1979).

In Louisiana, prior to the current La. Code Civ. P. art. 1732(6), the right to a jury trial existed for general maritime law claims brought to state courts pursuant to the "saving to suitors" clause. In *Lavergne*, 371 So. 2d at 810, this court held:

> [W]e conclude that a right to a trial by jury is one of the remedies to which a suitor is otherwise entitled pursuant to 28 U.S.C. § 1333 when an *in personam* suit based upon the general maritime law is brought in our state courts.

Therefore, this right to a jury existed in a Louisiana state court, regardless of whether the right existed in a federal court. In cases involving a Jones Act claim alone or combined with general maritime claims, either party had the right to request a jury. La. Code Civ. P. art. 1731(A).[7]

Louisiana Code Civ. P. art. 1732(6), effective since September, 1988, provides:

(Continued from previous page)

reference in Title 28, U.S.C. § 1292(a)(3), to admiralty cases shall be construed to mean admiralty and maritime claims within the meaning of this subdivision (h).

[7] La. Code Civ. P. art. 1731(a) states:

A. Except as limited by Article 1732, the right of trial by jury is recognized.

A trial by jury shall not be available in:

> (6) A suit on an admiralty or general maritime claim under federal law that is brought in state court under a federal "saving to suitors" clause, if the plaintiff has designated that suit as an admiralty or general maritime claim.

Louisiana recognizes the right to a trial by jury except in certain limited exceptions set forth by statute. La. Code Civ. P. arts. 1731-32. A party claiming that its case fits within an exception to the right to a trial by jury has the burden of proving that the case falls within that exception. *Cambridge Corner Corp. v. Menard,* 525 So. 2d 527, 530 (La. 1988). Furthermore, jurisprudence indicates that the right to a trial by jury is fundamental in character and courts should indulge in every presumption against a waiver, loss, or forfeiture of that right. *Champagne v. American S. Ins. Co.,* 295 So. 2d 437, 439 (La. 1974).

In the instant case, plaintiff did not limit his suit to general maritime claims. In both his original and amended petitions, he claimed damages under general maritime law and the Jones Act.

Article 1732(6) does not include Jones Act claims, but states only "[a] suit on *an admiralty or general maritime claim* under federal law that is brought in state court under a federal 'saving to suitors' clause" [emphasis added]. A Jones Act claim is not a maritime or admiralty claim, but a claim at law. *See Powell,* 644 F.2d at 1068; *Cruz,* 638 F.2d at 723. In addition, state courts have concurrent jurisdiction of Jones Act claims pursuant to federal statute, not the "saving to suitors" clause.

Under Fed. R. Civ. P. 9(h), a plaintiff in federal court with combined Jones Act and general maritime claims can choose to designate his entire suit as an admiralty claim and waive his right to a jury trial. However, the language of Fed. R. Civ. P. 9(h) differs from that of La. Code Civ. P. art. 1732(6). Rule 9(h) refers to "a claim for relief within the admiralty and maritime jurisdiction *that is also within the jurisdiction of the district court on some other ground*" [emphasis added]. The Louisiana article does not refer to any type of claim other than a maritime/admiralty claim.

Despite the clear language of art. 1732(6), plaintiff contends that the legislature's intent was to achieve uniformity with federal law by modeling art. 1732(6) after Fed. R. Civ. P. 9(h) to allow the plaintiff to control the right to a jury trial in a suit on an admiralty or general maritime claim combined with a Jones Act claim.[8]

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[8] The author of the bill amending art. 1732(6), Rep. Hunt Downer, explained that his purpose was to track the federal rules of procedure so that a plaintiff could control whether there would be a jury trial. (Comments of Rep. Hunt Downer before House Civil Law & Procedure Committee meeting on May 10, 1988.) In 1989, the legislature apparently recognized the omission in the article and amended it as follows:

> (6) A suit on an admiralty or general maritime claim under federal law *or on a claim under 46 U.S.C. 688* that is brought in state court under a federal "saving to suitors" clause, if the plaintiff has designated that suit as an admiralty, general maritime, *or Jones Act claim.* [emphasis added]

(Continued on following page)

However, we will not attempt to discern the will of the legislature at the time the act was passed. Article 9 of the Louisiana Civil Code provides: "When a law is clear and unambiguous and its application does not lead to absurd consequences, the law shall be applied as written and no further interpretation may be made in search of the intent of the legislature." Article 1732(6) is not ambiguous, nor does it lead to absurd results. It effects a change in prior law in that it gives the plaintiff alone the choice to have his admiralty or general maritime claims tried without a jury, but it does not extend this choice to cases in which the plaintiff has added a Jones Act claim or any other claim arising under non-maritime law. Any further limitation of the right to a trial by jury under art. 1732(6) addresses itself to the legislature.

Plaintiff therefore has not met the burden of proving that his case falls within an exception to the right of a trial by jury. His claims are based on general maritime law *and* the Jones Act. Article 1732(6) is clear and unambiguous in limiting the exception to a trial by jury to a suit on an admiralty or general maritime claim that the plaintiff has designated as such. Accordingly, art. 1732(6) is not applicable in this case. The trial judge erred in granting plaintiff's motion to strike the jury. *Heinhuis v. Venture Assoc.*, 558 So. 2d 1244 (La. App. 1st Cir. 1990), is expressly overruled.

(Continued from previous page)

H. R. 1249, 1989 Reg. Sess.

Governor Roemer vetoed the bill, stating that it was unnecessary because the existing law was sufficient. Letter from Gov. Roemer to Clerk of House of Representatives (July 10, 1989) (vetoing H. R. 1249).

DECREE

For the reasons assigned, the judgment of the district court granting Spencer Parker's motion to strike the jury is vacated and set aside. The case is remanded to the district court for further proceedings in accordance with the views expressed herein. All costs of this appeal are assessed against Spencer Parker.

SUPREME COURT OF LOUISIANA

NO. 91-CC-1271

SPENCER PARKER

versus

ROWAN COMPANIES, INC.

DENNIS, Justice, dissenting.

I respectfully dissent. Louisiana Code of Civil Procedure article 1732 provides in pertinent part:

> A trial by jury shall not be available in:
>
> (6) A suit on an admiralty or general maritime claim under federal law that is brought in state court under a federal "saving to suitors" clause, if the plaintiff has designated that suit as an admiralty or general maritime claim.

State courts, unlike federal courts, are court of plenary jurisdiction. In order to properly sue in a federal court, the plaintiff must invoke one of three bases for jurisdiction: federal question jurisdiction, 28 U.S.C. § 1331; diversity of citizenship, 28 U.S.C. § 1332; or admiralty jurisdiction, 28 U.S.C. § 1333. The federal courts have been traditionally referred to as having a "law" side and

an "admiralty" side of the court. On the law side, jurisdiction may be predicated only on §§ 1331 and 1332, federal question and diversity jurisdiction. On the admiralty side of the court, only admiralty jurisdiction may exist.

It is well-settled that admiralty claims are brought on the admiralty side of the court, or if an alternative basis for jurisdiction is present, they may also be brought on the law side of the federal court. *Romero v. International Terminal Operating Co.*, 358 U.S. 354 (1959). A Jones Act claim may be brought in federal court on either the law side because it is a federal statute invoking federal jurisdiction under 28 U.S.C. § 1331, see *Panama Railroad Co. v. Johnson*, 264 U.S. 375, 383-384 (1924); *Powell v. Offshore Navigation, Inc.*, 644 F.2d 1063, 1068 (5th Cir. 1981), or under the admiralty jurisdiction, see *Panama Railroad Co. v. Johnson, supra*, at 390-91.

It is equally clear that state courts have jurisdiction over federal matters arising under federal statutes and laws, *Testa v. Katt*, 330 U.S. 386 (1947), and admiralty matters brought pursuant to the savings clause of 28 U.S.C. § 1333, see Schoenbaum, *Admiralty and Maritime Law*, at 117 (1987), and cases cited therein.

It logically follows then that a Jones Act claim may be brought in state court under principles of state jurisdiction over federal matters under *Testa v. Katt, supra*, or under the savings clause of 28 U.S.C. § 1333. However, since a state court has plenary jurisdiction, there is no reason to state the basis of the jurisdiction.

As the majority noted, by invoking the admiralty jurisdiction of the federal courts, a Jones Act plaintiff may

obviate the defendant's right to request a jury trial. See *Lavergne v. Western Co.*, 371 So.2d 807, 809 (La. 1979). However, the election to proceed at law or in admiralty in a federal court, and thus invoke the procedural advantages regarding jury trials of each, is not irrevokable and may be reconsidered and subsequently changed. *Trentacosta v. Frontier Pacific Aircraft Industries, Inc.*, 813 F.2d 1553 (9th Cir. 1987); *Romero v. Bethlehem Steel Corp.*, 515 F.2d 1249 (5th Cir. 1975). It seems clear that the right to make a similar election is what is contemplated by article 1732(6); and the majority rightfully concludes that this is the purpose of the statute.

However, the majority errs in concluding that the Jones Act is not an admiralty claim within the meaning of article 1732(6). It is true that the United States Fifth Circuit Court of Appeals in *Powell v. Offshore Navigtion* [sic], *supra*, and *Cruz v. Hendy Intern. Co.*, 638 F.2d 719 (5th Cir. 1981), used unfortunate language which implies that a Jones Act claim is not an "admiralty" claim. However, the majority misunderstands the distinction sought by the Fifth Circuit. By closely looking at the opinion, one realizes that the court of appeal was stating that the Jones Act is not governed by ordinary principles of the general maritime law, but instead is based on federal statutory and common law remedies. This was recognized long ago by the United States Supreme Court in *Panama Railroad Co. v. Johnson*, 264 U.S. 375 (1924). However the Supreme Court also recognized that the mere fact that a Jones Act claim resembles traditional common law actions, it is still an admiralty claim governed by the maritime law where not in conflict with the statute. Consider:

The defendant objects that the [Jones Act] . . . is in conflict with § 2 of article 3 of the Constitution, which extends the judicial power of the United States to "all cases of admiralty and maritime jurisdiction."

* * *

The particular grounds on which a conflict . . . is asserted are that the statute enables a seaman asserting a cause of action essentially maritime to withdraw it from the reach of the maritime law and the admiralty jurisdiction, and to have it determined according to the principles of a different system, applicable to a distinct and irrelevant field, and also disregards the restriction in respect of uniformity. For reasons which will be stated, we think neither claim can be sustained.

The statute is concerned with the relative rights and obligations of seamen and their employers, arising out of personal injuries sustained by the former in the course of their employment. Without question this is a matter which falls within the recognized sphere of maritime law, and in respect of which the maritime rules have differed materially from those of the common law applicable to injuries sustained by employees in nonmaritime service. But, as Congress is empowered by the constitutional provision to alter, qualify, or supplement the maritime rules, there is no reason why it may not bring them into relative conformity to the common-law rules or some modification of the latter, if the change be countrywide and uniform in operation. . . .

Rightly understood, the statute neither withdraws injuries to seamen from the reach

> and operation of the maritime law, nor enables the seamen to do so. On the contrary, it brings into that law new rules, drawn from another system, and extends to injured seamen a right to invoke, at their election, either the relief accorded by the old rules, or that provided by the new rules. *The election is between alternatives accorded by the maritime law as modified, and not between that law and some non-maritime system.* [Emphasis added.] *Id.*, 387-389.

Thus under a clear reading of the statute, in light of United States Supreme Court precedent, it is completely erroneous for the majority to have reached the result that a "Jones Act claim is not a maritime or admiralty claim." See also Maraist, *Admiralty in a Nutshell*, at 216 (2d ed. 1988) ("A claim under the Jones Act may be brought as an admiralty claim in federal court or in state court"). This is further buttressed by the admiralty jurisdiction test enunciated by the Supreme Court in *Foremost Insurance Co. v. Richardson*, 457 U.S. 668, 674 (1982) which requires that the act occur on navigable waters and there must be a significant relationship between the wrong and traditional maritime activity. It cannot be reasonably disputed that a Jones Act seaman's claim falls within these traditional perimeters of the admiralty jurisdiction of the court. See *Hough v. Western Transp. Co.*, 70 U.S. 20, 36 (1865) ("Every species of tort, however occurring, and whether on board a vessel or not, if upon the high seas of navigable waters, is of admiralty cognizance.") Under current maritime law, the jurisdictional bases for the claim can be both at law, under federal question jurisdiction, or in admiralty.

As an additional point, the majority incorrectly gives great weight to the absence of certain language in article 1732(6) present in Federal Rules of Civil Procedure, Rule 9(h), which it was modeled after. Rule 9(h) refers to "a claim for relief within the admiralty and maritime jurisdiction *that is also within the jurisdiction of the district court on some other ground*". The underlined language is not in article 1732(6). The majority states that this indicates an intent to restrict the exception to only general maritime law claims or claims which are cognizable solely in admiralty. However, the majority ignores the clear reason for the exclusion of this language from the Louisiana rule: Louisiana courts have only one basis of jurisdiction which is plenary in nature; the federal courts have three bases of limited jurisdiction. Thus, this provision would make no sense in a state procedural context.

Accordingly, I agree with the reasoning of the Court of Appeal, First Circuit, in *Heinhuis v. Venture Assoc.*, 558 So.2d 1244 (La.App. 1st Cir. 1990), which finds that article 1732(6) is a procedural mechanism which merely allows the plaintiff to elect the same rights to a jury he could have enjoyed in a federal court election under Rule 9(h).

For these reasons, and the reasons assigned by Justice Watson, I respectfully dissent.

SUPREME COURT OF LOUISIANA

NO. 91 CC 1271

SPENCER PARKER

versus

ROWAN COMPANIES, INC.

Dec 2 1991

WATSON, Justice, dissenting.

A plaintiff cannot divide his cause of action for a maritime injury. *Baltimore S.S. Co. v. Phillips,* 274 U.S. 316, 47 S.Ct. 600, 71 L.Ed. 1069 (1927). Suit may be brought in state court under the "savings to suitors" clause. *Panama Railroad Co. v. Vasquez,* 271 U.S. 557, 46 S.Ct. 596, 70 L.Ed. 1085 (1926). See *Benedict on Admiralty,* vol. 1B, § 2, 1-12 (7th ed. 1991). L.S.A.-C.C.P. art. 1732(6) gives plaintiffs who combine Jones Act and general maritime claims in state court the right to waive trial by jury, the same option allowed by Federal Rule of Civil Procedure art. 9(h). A plaintiff may elect to sue in admiralty without a jury or at law with a jury. *Panama Railroad Co. v. Johnson,* 264 U.S. 375, 44 S.Ct. 391, 68 L.Ed. 740 (1924). Since general maritime claims are invariably combined with Jones Act claims, the majority's interpretation of Article 1732(6) would nullify the legislation.

I respectfully dissent.

SPENCER PARKER	*	16th JUDICIAL DISTRICT
VERSUS	*	COURT
	*	DOCKET NUMBER: 85,296
ROWAN COMPANIES, INC.	*	PARISH OF ST. MARY
	*	STATE OF LOUISIANA

* *

JUDGMENT

This matter was heard on briefs on Motion to Strike Jury Trial and To Strike Portion of Defendant's Answer filed by Plaintiff, Spencer Parker. The Court, considering the law and the evidence, the law and evidence being in favor of Plaintiff for the written reasons assigned;

IT IS HEREBY ORDERED that the Motion to Strike Jury Trial and To Strike Portion of Defendant's Answer of Plaintiff, Spencer Parker, be and the same is hereby granted.

JUDGMENT RENDERED on the 6th day of December, 1990; Judgment Read and Signed this 16th day of January , 1991 .

/s/ Illegible
DISTRICT JUDGE

RECEIVED AND FILED
JAN 02 1991
/s/ Laura Lawiere
Dy. Clerk of Court

CLERK'S OFFICE,
FRANKLIN, CA. JAN 22 1991 19__
A true copy of the original
Attest /s/ Laura Lawiere
Dy. Clerk of Court

APPENDIX 2

SUPREME COURT OF LOUISIANA

No. 91-CC-1587

ANTHONY R. BRILEY

Versus

ROWAN COMPANIES, INC. ET AL.

On Writ of Certiorari to the Court of Appeal,
Third Circuit, Parish of Evangeline

ON REHEARING

May 26 1992

CALOGERO, Chief Justice.

When we granted writs in this case, we consolidated it with *Parker v. Rowan Companies, Inc.* because of the existence of a common issue in the cases. We rendered opinions simultaneously and thereafter granted rehearings in each case.

Plaintiff Briley's case was in the same posture as Parker's; the trial judge in each case granted the plaintiff's motion to strike the defendant's request for a jury trial based on La. C.C.P. art. 1732(6). We have this date rendered an opinion in Parker upsetting the original decision of this court and reinstating the judgment of the district court.

For reasons assigned in *Parker* handed down on this date, we are reinstating the district court's judgment in this case.

DECREE

For the foregoing reasons, the ruling of the district court in granting plaintiff's motion to strike defendant's jury trial request, and the court of appeal's denial of defendant's writ application are affirmed.

AFFIRMED

SUPREME COURT OF LOUISIANA

NO. 91-CC-1587

ANTHONY R. BRILEY

V.

ROWAN COMPANIES, INC., ET AL.

ON WRIT OF CERTIORARI TO THE THIRTEENTH JUDICIAL DISTRICT COURT, PARISH OR EVANGELINE, STATE OF LOUISIANA HONORABLE A. GAYNOR SOILEAU, PRESIDING

MARCUS, Justice.

Anthony R. Briley was employed by Rowan Companies, Inc. (Rowan) as a welder assigned to a drilling barge. On May 25, 1989 Briley was involved in a work-related accident which he claims caused serious back injuries, resulting in surgery and disability. Briley sued Rowan and others in state court under "the constitutional laws of the United States of America, the Jones Act, the General Maritime Law, the Savings to Suitors Clause and applicable state law." Plaintiff sought remedies for negligence under the Jones Act and for unseaworthiness under

general maritime law. He also demanded maintenance and cure benefits. He did not request a jury trial in his petition.

Plaintiff filed an amended and supplemental petition in which he added a new defendant, but still did not request a jury trial. In its answer to plaintiff's amended petition, Rowan demanded a jury trial. Plaintiff responded with a motion to strike Rowan's jury trial request on the ground that Rowan was not entitled to a trial by jury for a Jones Act and/or general maritime claim in state court. After a hearing, the trial judge granted plaintiff's motion to strike the jury.

Rowan sought a writ of review to the Court of Appeal, Third Circuit. The court of appeal denied the writ. Upon Rowan's application, we granted the writ and ordered it consolidated with *Parker v. Rowan Cos.*[1]

For the reasons assigned in *Parker v. Rowan Cos.*,[2] handed down this date, we find that the trial judge erred in granting plaintiff's motion to strike the jury.

DECREE

The judgment of the district court granting Anthony R. Briley's motion to strike the jury is vacated and set aside. The case is remanded to the district court for further proceedings in accordance with the law. All costs of this appeal are assessed against Anthony R. Briley.

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[1] 582 So. 2d 1318 (La. 1991).

[2] ___ So. 2d ___ (La. 1991).

SUPREME COURT OF LOUISIANA

NO. 91-CC-1587

ANTHONY R. BRILEY

versus

ROWAN COMPANIES, INC., ET AL.

Dec 2 1991

DENNIS, Justice, dissenting.

For the reasons assigned by me in *Spencer Parker v. Rowan Companies*, 91-CC-1587, I respectfully dissent.

SUPREME COURT OF LOUISIANA

NO. 91 CC 1587

ANTHONY R. BRILEY

versus

ROWAN COMPANIES, INC., ET AL

Dec 2 1991

WATSON, Justice, dissenting.

For the reasons assigned in Spencer Parker versus Rowan Companies, Inc., Docket No. 91-CC-1271, I respectfully dissent.

ANTHONY R. BRILEY

VERSUS

ROWAN COMPANIES, INC., ROWAN INTERNATIONAL, INC., FIDELITY & CASUALTY COMPANY OF NEW YORK AND ROWANDRILL, INC.

CIVIL DOCKET NO. 50,398-B

13TH JUDICIAL DISTRICT COURT EVANGELINE PARISH, LOUISIANA

JUDGMENT ON MOTION TO STRIKE

Apr 2 1991

The Court having taken the matter under advisement and after carefully reviewing the briefs of counsel and the jurisprudence the Court grants the Motion to Strike filed by plaintiff, Anthony R. Briley.

JUDGMENT READ, RENDERED AND SIGNED in Open Court on this 2nd day of APRIL, 1991.

/s/ Illegible
JUDGE

A True Copy
Ville Platte, La. 4-2-91
Amanda F. Dardeau
Deputy Clerk of Court

ANTHONY R. BRILEY	NO: 50,398-B,
V.	CIVIL DOCKET,
ROWAN COMPANIES, INC., ROWAN INTERNATIONAL, INC., and FIDELITY & CASUALTY COMPANY OF NEW YORK	13TH JUDICIAL DISTRICT COURT,
	EVANGELINE PARISH, LOUISIANA.

JUDGMENT ON MOTION TO STRIKE JURY DEMAND

Apr 8 1991

This matter came for hearing on March 28, 1991 in the nature of a motion to strike defendant's demand for jury.

PRESENT WERE: JEFFREY M. BASSETT, for the plaintiff, ANTHONY R. BRILEY; and

DAVID HURLBURT, for defendant, ROWAN COMPANIES, INC.

Considering the evidence, law and argument of counsel, it is

ORDERED, ADJUDGED AND DECREED that the motion filed by plaintiff, ANTHONY R. BRILEY, to strike the jury demand of defendant, ROWAN COMPANIES, INC., is granted and that costs of the hearing are cast against defendant, ROWAN COMPANIES, INC.

SIGNED at Ville Platte, Louisiana, on this 8 day of April, 1991.

/s/ Illegible
JUDGE

A True Copy
Ville Platte, La. 4-8-91
/s/ Amanda F. Dardeau
Deputy Clerk of Court